

COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

ACT NO. 8 OF 2005

I assent



(Sgd). N. J. O. Liverpool
President

10th October, 2005.**AN ACT TO PROVIDE FOR THE IMPOSITION AND
COLLECTION OF EXCISE TAX AND FOR
RELATED MATTERS.**(Gazetted 20th October, 2005).

Be it enacted by the Parliament of the Commonwealth of
Dominica as follows:

1. (1) This Act may be cited as the -

Short title and
commencement.

EXCISE TAX ACT, 2005

(2) This Act shall come into operation on the 1st day of March, 2006.

Interpretation.

2. (1) In this Act, unless the context indicates otherwise,

“alcoholic beverages” means beverages of an alcoholic strength by volume exceeding 0.5 percent volume;

Chap. 69:01.

“duty” “entry” “export” “import” and “importer” have the meanings assigned to them by the Customs (Control and Management) Act or any Act that may replace it;

“excise tax” or “tax” means the tax imposed under this Act and includes any amount to the extent that it is treated as a tax for the purposes of this Act;

“manufacture”, in relation to goods, means to manufacture or produce and includes the application of any process in the course of manufacturing or producing the goods;

“registered manufacturer” means a person to whom a registration certificate has been issued under section 7;

“related persons” means-

(a) a natural person and a relative of that natural person; or

(b) a trust and a person who is or may be a beneficiary in respect of that trust or whose relative is or may be a beneficiary; or

(c) a partnership or company limited by shares and a member thereof who, together with shares or other membership interests held by persons who are related to such member under another clause of this definition, owns 25 percent or more of the rights to income or capital of the partnership or company; or

(d) a shareholder in a company limited by shares and the stock company if the shareholder, together

with shares held by persons who are related to such shareholder under another clause of this definition –

- (i) controls 25 percent or more of the voting power in the stock company; or
 - (ii) owns 25 percent or more of the rights to dividends or of the rights to capital; or
- (e) two companies, if a person, either alone or together with a person or persons who are related to such person under another clause of this definition–
- (i) controls 25 percent or more of the voting power in both companies; or
 - (ii) owns 25 percent or more of the rights to dividends or of the rights to capital in both companies;

and, for purposes of clauses (c), (d), and (e) of this definition, a person is treated as owning, on a pro rata basis, shares or other membership interests which are owned or controlled by such person indirectly through one or more interposed persons;

“relative”, in relation to a natural person, means –

- (a) the spouse of the person; or
- (b) an ancestor, lineal descendant of the person’s grandparents, stepfather, stepmother, or stepchild; or
- (c) a spouse of a person referred to in paragraph (b),

and for the purposes of this definition, an adopted child is treated as a natural child of the adopter;

“sale”, in relation to goods, has the meaning assigned to it in the Value Added Tax Act;

“security” means cash or a certified cheque;

“taxable goods” means goods specified in the First Schedule;

“tobacco products” means goods described under Customs Tariff Headings 24.02 and 24.03;

“warehouse” means any place for the deposit, keeping and securing of taxable goods.

(2) The classification and description of goods specified in the First Schedule are to be interpreted in accordance with the rules for interpretation set out in the General Rules for the Interpretation of the Harmonized System of the Customs Tariff.

(3) For the purposes of this Act -

(a) a passenger who imports baggage for which no entry is required is deemed to have entered the baggage for use within Dominica at the time the baggage is delivered to the passenger in Dominica; and

(b) the addressee of goods imported by post for which no entry is required is deemed to have entered the goods for use within Dominica at the time the goods are delivered to the addressee.

Administration.

3. (1) The Comptroller of Inland Revenue and, in respect to imports and exports, the Comptroller of Customs, shall administer and enforce this Act and collect the tax imposed by this Act.

(2) Where tax is imposed by this Act on the importation of goods into Dominica, for the purposes of collecting and enforcing the payment of the tax and, generally, for the purposes of administering and enforcing the provisions of this Act, the Customs (Control and Management) Act and any other enactment relating to the importation of goods apply as if the tax were a duty.

(3) The provisions of the Value Added Tax Act shall apply with such modifications as the circumstances require, as if the excise tax were value added tax and in particular the follow-

ing sections of the Value Added Tax Act shall apply to the excise tax with suitable modifications –

Sections 7, 8, 22, 32, 34 through 51, 53 through 72, 74, 75, 78, 79, 80, 84 through 88, 90, 92 through 95, 97 through 100, 105, and 106.

4. (1) Subject to the provisions of this Act, an excise tax is imposed on - Imposition of Tax.

(a) taxable goods (other than taxable goods previously imported into Dominica) removed for consumption in Dominica from a warehouse of a manufacturer registered or required to be registered for the purposes of this Act; and

(b) taxable goods imported into Dominica

at the rates specified in the Third Column of the First Schedule by order subject to the affirmative resolution of Parliament.

(2) A manufacturer who cannot account, to the satisfaction of the Comptroller of Inland Revenue, for any quantity of taxable goods manufactured or warehoused by him is deemed to have removed those taxable goods from a warehouse for consumption in Dominica during the month in which the deficiency arose.

(3) A manufacturer of taxable goods is required to notify the Comptroller of Inland Revenue of any discrepancies between actual and recorded inventory as soon as the manufacturer becomes aware of the discrepancy.

(4) No tax shall be due in respect of:

(a) goods destroyed by fire or other natural causes prior to removal from the manufacturer's warehouse; or

(b) goods that have deteriorated or have been damaged in storage in the manufacturer's warehouse and are securely disposed of in a manner satisfactory to the Comptroller of Inland Revenue.

First Schedule
Second Schedule.

(5) The Minister may, by Order published in the *Gazette*, amend the First and Second Schedules.

(6) An order referred to in subsection (5) must be approved by affirmative resolution of the Parliament.

Value and quantity.

5. (1) Where tax is payable on taxable goods by reference to their value, the tax is calculated on an amount, referred to as the “chargeable value”, equal to -

(a) if the goods are imported, the total of -

(i) the value of the goods as it would be determined under the Customs (Control and Management) Act for the purpose of assessing ad valorem duty of customs on the goods, whether ad valorem duty of customs is payable on the goods or not, and

(ii) the amount of any taxes or duties (other than tax payable under this Act or the Value Added Tax Act), fees, or other charges that are payable upon the entry of the goods into Dominica; or

(b) if the goods are manufactured in Dominica, the amount of consideration in money, after deducting therefrom the amount of VAT payable, that a manufacturer of the goods would reasonably be expected to fetch for the goods on a sale in the open market to a purchaser who is not related to the manufacturer.

(2) Where the value of goods manufactured in Dominica cannot be determined under subsection (1)(b), the value is determined in accordance with any method approved by the Comptroller of Inland Revenue which provides a sufficiently objective approximation of the consideration in money which could be obtained for that sale of goods had the sale been freely offered and made between persons who are not related persons.

(3) Where tax is payable on taxable goods by reference to a specific quantity measured by volume or weight, if the goods are imported or removed from a warehouse in a container intended for sale with or of a kind usually sold with the goods in a sale by retail and the container is marked, labelled, or commonly sold as containing, or commonly reputed to contain, a specific quantity of such goods, for the purpose of determining the tax payable in respect of the goods, the container is deemed to contain not less than that specific quantity.

6. (1) Where tax is imposed on goods removed from the warehouse of a manufacturer who is registered or required to be registered, the manufacturer is required to pay the tax to the Comptroller of Inland Revenue not later than 20 days after the end of the month during which the goods were removed.

Payment of tax by manufacturer.

(2) No taxable goods may be removed from a warehouse of a manufacturer who is registered or required to be registered unless the manufacturer has -

(a) paid the tax payable on the taxable goods; or

(b) entered into -

(i) a bond with security equal to triple the amount of tax that would be payable on the taxable goods if the taxable goods were removed from the warehouse for consumption in Dominica, or

(ii) a general bond, to continue in force for twelve months, with security in an amount approved by the Comptroller of Inland Revenue.

(3) Where a manufacturer has entered into a general bond referred to in subsection (2)(b)(ii) but the total of -

(a) the tax on those taxable goods, and

(b) the tax payable by the manufacturer on all other taxable goods removed from a warehouse that remains unpaid,

exceeds the amount of security under such general bond, the manufacturer is required to pay the tax on the taxable goods that he intends to remove from the warehouse before they are so removed.

Registration and
approved warehouses

7. (1) A manufacturer who carries on the business of manufacturing taxable goods and who is required to be registered under subsection (2) is required to sell taxable goods only from a warehouse that has been approved for this purpose by the Comptroller of Inland Revenue.

(2) A manufacturer who carries on the business of manufacturing taxable goods is required to be a registered manufacturer within 21 calendar days of –

(a) the end of any period of 12 or fewer months where during that period the manufacturer's receipts from the sale of taxable goods exceeded \$20,000;

(b) the beginning of any period of 365 calendar days, where there are reasonable grounds to expect that the manufacturer's receipts during that period from the sale of taxable goods will exceed \$20,000; or

(c) the end of any three-month period during which the manufacturer's receipts from the sale of taxable goods exceeded \$5,000 and there are reasonable grounds to expect the manufacturer's total receipts from the sale of taxable goods during that period and the next consecutive nine months will exceed \$20,000.

(3) Where a manufacturer who is required to be registered under subsection (2) applies for registration, the Comptroller of

Inland Revenue shall register the manufacturer for the purposes of this Act and approve the manufacturer's warehouse for the purpose of selling taxable goods if the warehouse meets the standards set out in Regulations.

(4) The Comptroller of Inland Revenue shall issue to each manufacturer registered a certificate of registration which states the name and other relevant details of the registered person, the date on which the registration takes effect, and the manufacturer's taxpayer account number issued for tax purposes by the Comptroller of Inland Revenue to a person registered under the Act.

(5) For the purpose of determining whether a manufacturer is required to be registered under subsection (1), receipts from the sale of taxable goods manufactured by all persons who are related persons in respect of the manufacturer shall be treated as receipts of the manufacturer.

(6) A registered manufacturer shall notify the Comptroller of Inland Revenue, in writing, within 21 days of -

- (a) any change in the name, address, place of business, constitution, or nature of the principal taxable activity or activities of the manufacturer; or
- (b) ceasing to operate or closing on a temporary basis in a situation not covered in section 8(1).

8. (1) Subject to subsection (2) and (8) a registered manufacturer who ceases to manufacture taxable goods shall notify the Comptroller of Inland Revenue of that fact within seven days of the date of such cessation, and the Comptroller of Inland Revenue is required to cancel the registration of that manufacturer with effect from the first day on which there are no longer taxable goods in the manufacturer's warehouse.

Cancellation of
registration

(2) The Comptroller of Inland Revenue shall not cancel the registration of a registered manufacturer under subsection (1) where the Comptroller of Inland Revenue has reasonable grounds to believe that the manufacturer will recommence the

manufacture of taxable goods at any time within twelve months from the date of cessation.

(3) A notification pursuant to subsection (1) shall be made in writing and shall state:

- (a) the date on which the manufacturer ceased to manufacture taxable goods;
- (b) the date on which the manufacturer expects that no taxable goods will remain in the manufacturer's warehouse; and
- (c) whether or not that manufacturer intends to recommence manufacturing of taxable goods within twelve months from the date provided under paragraph (b).

(4) Any obligation or liability under this Act, including the obligation to pay tax and to file returns, of any manufacturer in respect of anything done or omitted to be done by that manufacturer while the manufacturer is a registered manufacturer, is not affected by cancellation of the manufacturer's registration.

(5) A manufacturer dissatisfied with a decision of the Comptroller of Inland Revenue under this section to cancel or not to cancel the manufacturer's registration may challenge the decision only under Part IX of the Value Added Tax Act.

(6) A registered manufacturer who sells a business of manufacturing taxable goods as a going concern must notify the Comptroller of Inland Revenue of that fact at least three days before the earliest of the date –

- (a) the sale closes;
- (b) the purchaser acquires any legal interest in the assets to be acquired; and
- (c) the assets of the going concern are transferred.

Payment of tax by importers.

9. Where tax is imposed by this Act on the importation of goods into Dominica, the importer is required to pay the tax to the

Comptroller of Customs before the goods are entered for use within Dominica.

10. A person who is a registered manufacturer during all or a portion of a calendar month is required to file with the Comptroller of Inland Revenue, within 20 calendar days after the end of the month, in the prescribed manner an accurate return for the month in the prescribed form containing the prescribed information, regardless of whether any tax is due.

Returns from registered manufacturers.

11. The goods specified in the Second Schedule are exempt from excise tax.

Exemptions. Second Schedule.

12. (1) The Comptroller of Customs may grant permission for the importation of taxable goods without payment of tax upon being satisfied that —

Temporary importation.

- (a) the goods are imported for temporary use or for a temporary purpose only;
- (b) the goods are the bona fide property, and are for the exclusive use, of a person temporarily in Dominica;
- (c) the goods will be exported within three months from the grant of the permission; and
- (d) the person to whom the permission has been granted will deposit with the Comptroller of Customs an amount equal to the tax payable on the goods.

(2) Where goods imported under subsection (1) are not exported within the period specified in subsection (1)(c), any deposit made with the Comptroller of Customs shall be brought into account by the Comptroller of Customs as excise tax.

(3) Notwithstanding subsections (1) and (2), the Comptroller of Customs may, where he considers it necessary, allow such further period as he thinks fit for the export of the goods.

(4) Where goods referred to in subsection (1) are exported within the time specified in subsection (1) or the further period allowed pursuant to subsection (3), the Comptroller of Customs shall refund the deposit referred to in subsection (1)(d).

Relief for raw material.

13. (1) Where the Comptroller of Inland Revenue is satisfied, upon a certificate by a registered manufacturer in the prescribed form, that taxable goods, whether imported into Dominica or manufactured in Dominica, are intended to be used by the registered manufacturer as raw materials for the manufacture of other taxable goods, the Comptroller of Inland Revenue may, in respect of such goods, instead of requiring payment of tax in full, require that the manufacturer deposit such security as the Comptroller of Inland Revenue thinks fit.

(2) Where money was given as security under subsection (1) and the Comptroller of Inland Revenue is subsequently satisfied that the goods were used as raw materials for the manufacture in Dominica of other taxable goods, the Comptroller of Inland Revenue may apply such money against any tax that becomes payable on the import of the other taxable goods or removal of other taxable goods from a warehouse of the taxpayer.

(3) Where goods referred to in subsection (1) are applied to a purpose other than as raw materials for the manufacture of other taxable goods, the decision of the Comptroller of Inland Revenue to suspend payment of tax is immediately revoked and the deposit shall be applied as payment of the tax liability that would have applied if not for the decision by the Comptroller to suspect the tax liability.

Refunds.

14. (1) Subject to this section, where a person has paid an amount as or on account of tax that exceeds the amount that was payable by him under this Act, the Comptroller of Inland Revenue (or, in the case of tax paid on import, the Comptroller of Customs) is required, within 90 days of the date the application was filed, to pay a refund to that person equal to the amount of the excess if that person applies for a refund within two years after the amount was paid.

(2) Subject to this section, where a person who has imported taxable goods subsequently exports those goods or puts them on board a ship or aircraft for use as stores and the goods are in compliance with the conditions for payment of a drawback of duties under the customs legislation, the Comptroller of Customs is required, within 90 days of the date the application was filed, to pay an amount to the person equal to the tax paid on the goods if the person applies for a refund within two years after he so exported the goods or put them on board the ship or aircraft.

(3) An application under this section

- (a) must be made in the prescribed form;
- (b) must contain the prescribed information; and
- (c) must be filed with the Comptroller of Inland Revenue or the Comptroller of Customs in the prescribed manner.

(4) Where a refund or other payment is payable to a person under this section, the Comptroller of Inland Revenue or the Comptroller of Customs may apply it in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, other taxes or duties collected by the Comptroller of Inland Revenue or the Comptroller of Customs, and any unpaid amounts under the repealed Consumption Tax Act, Sales Tax Act, Hotel Occupancy Tax Act, and the Entertainment Tax Act.

(5) If the Comptroller of Inland Revenue or the Comptroller of Customs refunds an amount to a person in error, the person is required to repay the amount, together with interest starting from the 10th day after the person was notified by the Comptroller of Inland Revenue or the Comptroller of Customs of the error, and the amount may be recovered from the person as tax.

Relief under the
Customs Act.

15. Part V of the Customs (Control and Management) Act, applies, with such modifications as the circumstances require, for the purposes of this Act in respect of goods produced in Dominica for export.

Interest.

16. A manufacturer who defaults in paying any tax payable by him by the day prescribed by section 6 is required to pay, in addition to the amount of tax in default, interest at the rate prescribed under section 28 of the Value Added Tax Act for each month or part of a month during which the tax remains unpaid.

Penalties.

17. (1) A manufacturer who is required to register under section 7 and who sells taxable goods without registering is liable for a penalty equal to double the amount of tax payable from the time the manufacturer was required to apply for registration until the manufacturer is registered.

(2) A manufacturer who is required to sell taxable goods only from an approved warehouse under section 7 and who sells goods from premises that are not an approved warehouse is liable for a penalty equal to double the amount of tax payable in respect of goods sold from such premises from the time the manufacturer was required to sell only from an approved warehouse until the manufacturer sells only from an approved warehouse.

(3) A manufacturer who fails to notify the Comptroller of Inland Revenue as required by sections 7(7) and 8(1) is liable for a penalty not exceeding \$1,000.

(4) A manufacturer who fails to file a return by the day prescribed by section 10 is liable for a penalty of \$100.00 per month, or part thereof, for the period during which the return remains unfiled.

(5) A manufacturer who fails to pay tax, being the whole or part of the remainder of any tax due or payable under this Act, by the due date is liable to a penalty equal to ten percent of the amount of tax due.

18. (1) Where a manufacturer repeatedly violates –

- (a) section 10 by failing to file returns;
- (b) section 14 by improperly claiming tax refunds;
- (c) section 71 of the Value Added Tax Act by impeding tax administration; or
- (d) sections 6 and 9 by failing to pay tax when due

Temporary closure of
business premises.

the Comptroller of Inland Revenue may, after obtaining an order of a court having jurisdiction in respect of the manufacturer, forcibly close one or more business premises of the manufacturer for a period of between three and thirty days.

(2) For purposes of subsection (1), the Comptroller of Inland Revenue may use reasonable force and police assistance necessary to close the premises, and may barr access with locks, fencing, boarding, or other appropriate methods.

(3) For purposes of this section, a repeated violation means a violation that is committed within one year of receipt by the manufacturer of a written warning –

- (a) that a violation of such kind has been committed more than once within the calendar year preceding the year in which the warning is received by the manufacturer, and
- (b) that repetition may result in closure under this section.

19. The Minister may make regulations generally for giving effect to the provisions of this Act.

Regulations.

FIRST SCHEDULE

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
CUSTOMS TARIFF HEADING	DESCRIPTION OF GOODS	RATES
22.03	Beer made from malt	
2203.00.10	Beer	
2203.00.20	Stout	
2203.00.90	Other	
22.04	Wine of fresh grapes, including fortified wines; grape must other than that of Heading 20.09	
22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substance	
22.06	Other fermented beverages (for example, cider, perry, mead)	
2206.00.10	Shandy	
2206.00.90	Other	
22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol.; spirits, liqueurs and other spirituous beverages	
2208.20.00	Spirits obtained by distilling grape wine or grape marc:	
2208.30.00	Whiskies:	
2208.40.00	Rum and tafia:	
2208.50.00	Gin and Geneva:	
2208.60.00	Vodka	
2208.70.00	Liqueurs and cordials	
2208.90.90	Other	
24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes	

24.03	Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco extracts and essences
27.10	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations
2710.11.10	Aviation spirit of 100 octane and over
2710.11.20	Aviation spirit under 100 octane
2710.11.30	Motor spirit (gasoline)
2710.11.40	Spirit type (gasoline type) jet fuel
2710.11.90	Other
2710.19.10	Kerosene Type jet fuel
2710.19.20	Illuminating kerosene
2710.19.30	Vapouring oil or white spirit
2710.19.40	Diesel oil
2710.19.50	Gas oils (other than diesel oil)
2710.19.60	Bunker c grade fuel oil
2710.19.70	Partly refined petroleum, including topped crudes
27.11	Petroleum gases and other gaseous hydrocarbons
2711.10.00	Liquefied:
87.02	Motor vehicles for the transport of ten or more persons, including the driver.
87.03	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of Heading 87.02), including station wagons and racing cars
87.04	Motor vehicles for the transport of goods

Section 11.

SECOND SCHEDULE

The following goods are exempt from excise tax

- (a) Non-alcoholic beverages;
- (b) Alcohol and spirits described under Customs Tariff Heading 22.07;
- (c) Aromatic bitters described under Customs Tariff Headings 2208.90.10 & 2208.90.20;
- (d) Tobacco described under Customs Tariff Heading 24.01;
- (e) Gases in gaseous state described under Customs Tariff Heading 2711.20.00; and
- (f) Lubricating oils and greases described under the Customs Tariff Heading 2710.19.80.

Passed in the House of Assembly this 30th day of August, 2005.

ALEX F. PHILLIP (MRS.)
Clerk of the House of Assembly

DOMINICA

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